

UNITED STATES TAX COURT
WASHINGTON, DC 20217

RS

EDWARD J. TANGEL & BEATRICE C.)		
TANGEL, ET AL.,)		
)		
Petitioner(s),)		
)		
v.)	Docket No. 27268-13,	27309-13,
)	27371-13,	27373-13,
COMMISSIONER OF INTERNAL REVENUE,)	27374-13,	27375-13.
)		
Respondent)		

ORDER

These consolidated cases are calendared for trial at a special session of the Court starting at 10:00 a.m., on Monday, July 13, 2020, in Room 3908, 39th Floor, Kluczynski Federal Building, 230 S. Dearborn Street, Chicago, Illinois 60604. On March 9, 2020, petitioners filed a Motion to Compel Production of Documents and a Motion to Compel Responses to Interrogatories. On March 10, 2020, petitioners filed a First Amended Motion to Compel Production of Documents and a document styled Petitioners' First Amendment to Motion to Compel Responses to Interrogatories. These documents correct typographical errors in the documents filed the previous day.

The principal issue for trial is whether petitioners, for the taxable years 2008-2010, are entitled to research and experimentation (R&E) credits under I.R.C. § 41 in the aggregate amount of \$872,993 as flow-through items from Enercon Engineering, Inc. (Enercon), an S corporation. These R&E credits were claimed with respect to hundreds of engineering projects.

On March 23, 2016, after respondent did not respond to informal discovery, petitioners served 22 interrogatories (inclusive of discrete subparts) addressing the R&E issue. Petitioner also served 19 requests for production of documents, several of which sought documents linked to respondent's interrogatory responses. On September 22, 2016, respondent generally objected to these discovery requests, asserting that they were unduly burdensome, called for legal conclusions, and exceeded the 25 interrogatory limit. See Tax Court Rule 71(a).

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On March 15, 2018, we issued an order setting forth a method for selecting a sample of R&E projects for trial. Noting that discovery had been held in abeyance while the parties worked on selecting a sample, we indicated that the parties “may pursue reasonable additional discovery” with respect to projects in the sample, once selected. We cautioned that any “additional discovery should be proportional to the amount in dispute * * * and to the needs of the case.”

The parties subsequently selected 14 sample projects. Petitioners then asked respondent to revisit his responses to the discovery served in March 2016, focusing solely on the 14 sample projects. When respondent indicated that his answers had not changed, petitioners served, on January 24, 2020, a second set of interrogatories and of requests for production of documents. The second set of interrogatories includes 15 questions resembling those posed in March 2016, except that they are limited to the 14 sample projects. Petitioners ask that respondent “provide a complete list of reasons” why he contends that petitioners are not entitled to R&E credits and that he identify the factual basis and evidentiary support for each of those reasons. Petitioners list 13 reasons why the IRS might dispute their entitlement to credits and ask respondent to specify the reasons on which he relies. Petitioners’ second set of document requests asks respondent to identify the documents on which he relies to support the positions taken in his interrogatory responses.

On February 24, 2020, respondent served his responses to the renewed interrogatories and document requests. He averred that “no response is required” to any of the interrogatories because (1) “petitioners have exceeded the number of written interrogatories allowed under Tax Court Rule 71(a),” (2) “the Commissioner is not required to prepare a statement of every fact or detail known to him,” and (3) “petitioners bear the burden of proving their entitlement to the research credit.” Because “[n]o documents were identified” in any of the interrogatories, respondent also declined to identify or produce any documents.

None of respondent’s objections justifies his blanket refusal to respond. First, petitioners have not exceeded the permissible number of interrogatories. Our Rules generally limit a party to 25 interrogatories unless otherwise stipulated or ordered by the Court. See Tax Court Rule 71(a). Petitioners’ second set of interrogatories includes 15 questions; these interrogatories in effect renew, with respect to the 14 sample projects, the interrogatories that petitioners served in March 2016, to which respondent mostly declined to respond. Our Order dated March 15, 2018, expressly permitted additional discovery with respect to the sample projects. Rule 71(a) does not excuse respondent’s refusal to respond.

Nor is respondent's complete failure to respond excused by our case law. The Commissioner is not required to supply in discovery a statement of "every fact known to him" or a "statement of the legal authorities on which [he] relies." See Zaentz v. Commissioner, 73 T.C. 469, 478-479 (1979). On the other hand, petitioner has a right to "seek clarification of the Commissioner's position or contentions." Id. at 478. "[T]o prepare properly for trial, it is necessary for each party to know the position of the other party, and discovery may be used to clarify that position." Ibid. Petitioners' discovery requests seem largely designed to inquire into respondent's contentions.

In response to the discovery petitioners served in March 2016, respondent offered a blanket response stating, in effect, that petitioners had not performed "qualified research" as defined in I.R.C. § 41(d)(1). This high-level contention is insufficient to permit petitioners to reasonably prepare for trial. We will direct respondent to supplement his responses to define more precisely his contentions with respect to the 14 sample projects.

While petitioners may seek discovery of respondent's contentions, they cannot ask respondent to prepare their case. We will not require respondent to disclose, at this time, the legal authorities upon which he relies. Nor will we require respondent to explain how each document upon which he expects to rely is related to each of his contentions. Our pre-trial order sets forth the deadlines for stipulating documents and exchanging unstipulated documents upon which either party intends to rely at trial. If either party unreasonably refuses to participate in the stipulation process, then the other party may file a motion to compel stipulation under Tax Court Rule 91(f).

In consideration of the foregoing, it is

ORDERED that Petitioners' First Amendment to Motion to Compel Responses to Interrogatories, filed March 10, 2020, at docket entry # 129, shall be recharacterized as Petitioners' First Amended Motion to Compel Responses to Interrogatories. It is further

ORDERED that Petitioners' First Amended Motion to Compel Responses to Interrogatories, filed March 10, 2020, is granted to the extent set forth in this Order. Respondent shall complete and serve upon petitioners' counsel, by April 18, 2019, supplemental responses to petitioners' interrogatories that define more precisely his contentions with respect to the 14 sample projects. It is further

ORDERED that Petitioners' First Amended Motion to Compel Production of Documents, filed March 10, 2020, at docket entry # 128, is denied to the extent set forth in this Order.

(Signed) Albert G. Lauber
Judge

Dated: Washington, D.C.
March 18, 2020